

## THE US AND PANAMANIAN NEGOTIATING POSITIONS ON MAJOR ISSUES, AS THEY EMERGED DURING THE 1971-1972 TALKS

### *Panama's Position*

The Panamanians are asking for a new treaty which would terminate no later than 1994 with a possible short extension if the US expands the canal's capacity. They want full jurisdiction over the canal area no later than five years after the signing of a treaty. They would grant the US use of very limited land and water areas for the exclusive purpose of operating, maintaining, and protecting the canal.

Panama would have primary responsibility for the protection of the canal from local threats, in cooperation with the US. Defense from external threats would be multinational and conducted from bases outside Panama. US forces in the area would be strictly limited.

The new treaty would stipulate a five-year limitation on an option for the US to build either a sea-level canal or a third set of locks. Finally, Panama would expect greatly expanded financial and economic benefits from the canal under the new treaty (Panama's negotiators have hinted at \$50 to \$100 million a year).

### *The US Position*

The US is willing to abrogate the 1903 treaty and devise a new treaty relationship. It wants a treaty that would last about 50 years, with options to extend it 35 years from the completion of construction if third locks are built or 40 years if a sea-level canal is built. But it wants an open option (beginning in 15 years at the earliest and extending possibly up to the end of the century) to decide on whether and how to expand the capacity of the canal.

In any case, the US wants to retain certain jurisdictional rights in order to operate, maintain, and protect the waterway during the life of the treaty. Panama would gain immediate jurisdiction in criminal and civil cases involving only Panamanians in the canal area, but most other types of jurisdiction would be passed to the Panamanians over a transition period of up to 15 years, e.g., joint patrols with the Guardia Nacional during the transition period, after which Panama would get exclusive police authority. The US would still retain the right to maintain security guards around US property and employee residences, as well as certain other rights directly connected with canal operations.

There would be a substantial reduction in land and water areas used by the US in operation, maintenance, and protection of the canal, and even these lands could be opened to Panamanian development with US consent. The US would retain the right to defend the canal in peace or war, the power of decision in this area remaining with the US.

Finally, there would be a substantial increase in financial benefits to Panama from the operation of the canal, i.e., a royalty on tonnage amounting to some \$20-\$25 million annually at present traffic rates (compared with a \$2.1 million annuity at present) and the expectation of steady growth in income to Panama during the life of the treaty.

Transfer of the Southern Command from Panama

Although in the 1903 treaty we agreed that the Canal "shall be neutral in perpetuity", and although the treaty granted us the right to station land and naval forces in Panama solely for the protection of the Canal, the U.S. has since 1963 maintained a unified command in Panama (SOUTHCOM) with responsibilities for defense of the hemisphere and for administering our military missions throughout it. While we have argued on occasion that the treaty permits of such a command because we may act as if sovereign, it can be argued that a more reasonable interpretation would be to the effect that the U.S. accepted the treaty's neutrality provisions as a restriction on its ability to act.

In any event the Panamanians not only contest with some legitimacy our legal right to operate the command but also assert, with telling effect on international observers, that the existence of this strategic headquarters on Panama's territory might well attract the nuclear weaponry of enemies of the U.S. (who might or might not be enemies of Panama); that this headquarters might well direct operational activities in Latin America, from Panamanian territory, with which Panama would not be in accord; and that few honest men could doubt the command is keeping the waterway neutral for the U.S., not for the world at large.

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The President decided several years ago against the recommendation of the Secretaries of Defense and State that SOUTHCOM should be abolished but he has not been asked to address the question of its transfer out of Panama.

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